

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JOHNNY D. HALL

PLAINTIFF

v.

Civil No. 04-5034

JO ANNE B. BARNHART, Commissioner
Social Security Administration

DEFENDANT

ORDER

Plaintiff Johnny D. Hall appealed the Commissioner's denial of benefits to this court. On March 2, 2005, judgment was entered remanding plaintiff's case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff now moves for an award of \$3,293.60 in attorney's fees and costs under 28 U.S.C. § 2412, the Equal Access to Justice Act (EAJA), requesting compensation for 25 hours of work at an hourly rate of \$125.00, and \$168.60 in costs. The defendant did not file a response and the time for responding has expired.

Pursuant to 28 U.S.C. § 2412(d)(1)(A), the court must award attorney's fees to a prevailing social security claimant unless the Commissioner's position in denying benefits was substantially justified. The burden is on the Commissioner to show substantial justification for the government's denial of benefits. *Jackson v. Bowen*, 807 F.2d 127, 128 (8th Cir. 1986). After reviewing the file, we find plaintiff is a prevailing party in this matter. Under *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993), a social security claimant who obtains a sentence-four judgment reversing the Commissioner's denial of benefits and remanding the case for further proceedings is a prevailing party.

Plaintiff requests attorney's fees under EAJA at a rate of \$125.00 an hour. We find plaintiff's attorney entitled to compensation at this rate. *See* 28 U.S.C. § 2412(d)(2)(A) (setting standard maximum hourly rate at \$125.00). We further find that plaintiff's attorney is entitled to be compensated

under EAJA for 25 hours, the number of hours of work she indicates she expended on this case at the district court level. Additionally, this court finds plaintiff's counsel is entitled to costs in the amount of \$168.60

Accordingly, plaintiff's attorney is hereby awarded fees and costs under EAJA in the amount of \$3,293.60, representing 25 hours of work at the district court level at a rate of \$125.00 an hour plus \$168.60 in expenses. This amount should be paid in addition to, and not out of, any past due benefits to which plaintiff may be awarded in the future.

IT IS SO ORDERED this 15th day of September 2005.

/s/Beverly Stites Jones

HON. BEVERLY STITES JONES
UNITED STATES MAGISTRATE JUDGE